died before she reached her, but this fact was not known when the telegram was sent. The other was based on a telegram beginning "Brother dead." The one sought damages for mental anguish, the other punitive damages.

By a narrow construction it has been held generally that the telegraph company is not a common carrier, though it is in a public employment. *Tel. Co.* v. *Griswold,* 37 Ohio St. 301. By constitutional provision or statute it is often made so, and the *Reeves* case holds that the provision in the South Carolina constitution is merely declaratory of the common law. This is not the weight of authority. Both cases rightly hold that a telegraph company is not bound to establish a money order office at a place where the business does not warrant it, but that it may undertake to deliver money by telegraph, and if so it must live up to its contract. This it did in the *Lehue* case *because* it stipulated to use a bank to make payment, and that it would not be liable for the negligence of the bank. In the *Reaves* case the company undertook the service and was liable for the failure to deliver in the time promised. There seems to be little difference in the liability of the telegraph company for the transmission of money and of messages. In each case, perhaps, nothing is actually carried, but the effect of the undertaking is the same. It is sometimes said that a contract to transmit money is a business transaction, and the measure of damages is to be the same as for breach of a commercial contract. Hence there can be no recovery for mental anguish caused by failure to send money, even in states permitting such recovery on death messages. *Robinson* v. *W. U. Tel. Co.,* 114 Ky. 504. But this has been denied, *W. U. Tel. Co.* v. *Wells,* 50 Fla. 474, 111 A. S. R. 129 *n,* and is not followed in Kentucky in *W. U. Tel Co* v. *Sisson,* 155 Ky. 624, in a case where the agent knew the telegram was to enable a son to secure the necessary money to reach his father's bedside, the latter being at the point of death. The telegram on its face did not show this. The recent case of *W. U. Tel. Co.* v. *Bowen* (Ala. 1917), 76 So. 985 is to the same effect, and so apparently are both the cases under review, the *Reaves* case saying punitive damages might be recovered for failure to deliver the money where the telegram showed on its face the purpose—"Brother dead", and the *Lehue* case refusing the recovery of damages for mental anguish because there was no evidence the agent knew of the mother's illness or death.

WILLS—JURISDICTION IN PROBATE PROCEEDINGS.—In *Iowa* v. *Slimmer,* U. S. Sup. Ct. Dec. 9, 1918, the State of Iowa, with a view to the ultimate collection of $13,750 in taxes against the property of Abraham Slimmer, deceased, sought an order to ensure the dismissal of Minnesota probate proceedings, meantime asking an injunction restraining such proceedings, pending the suit. The bill alleged that the deceased died in Iowa, where he had been domiciled many years, leaving notes and Liberty Bonds valued at $550,000, nearly all in the custody of his son in Minnesota. For at least five years this son had custody of the notes of deceased, in pursuance of a conspiracy to defraud the State of Iowa of taxes. Probate proceedings were started by the son in Minnesota, and by the State of Iowa in Iowa. On the ground that at least for purposes of inheritance taxes probate proceedings might be

had in Minnesota, and also because the Minnesota court had power to distribute under the will the property located there even though decedent was not a resident of Minnesota, the relief was denied.

The case involves both taxation and jurisdiction in probate proceedings. Generally speaking personal property may be taxed at its *situs*, or at the domicil of the owner, or both. *Buck* v. *Beach*, 206 U. S. 392. The *situs* for this purpose in the case of notes is generally the jurisdiction in which the payment of the notes must be enforced, and not the place where the notes may be deposited, as they are not the property but only evidence of it. It is not unconstitutional, however, to impose inheritance taxes on such property in the state where the notes are deposited. The principal case relies on *Wheeler* v. *New York*, 233 U. S. 434. Bonds and notes secured by mortgages may be taxed also at the *situs* of the security. *Overby* v. *Gordon*, 177 U. S. 214. Doubtless by appropriate proceedings the property in the principal case can be reached by the taxing power of the state of Iowa. *Bristol* v. *Washington Co.*, 177 U. S. 133. Wills may be probated at the domicil of the deceased, and also at the *situs* of the property, if such property is located in a foreign state. Only by comity can probate proceedings in one state have any effect in another. Whether a finding of domicil of the deceased by one court can be collaterally attacked in another is in dispute. To allow this question to be raised in different courts and before different juries would lead to embarrassing results, as has been well pointed out in the monographic note 81 Am. State Rep. 548. See also *Horton* v. *Dickie*, 217 N. Y. 363, Ann. Cas. 1918 A 611 and note, holding that Ohio proceedings were not conclusive upon persons in New York who were not parties to the proceedings. In denying the State of Iowa relief by restraining the Minnesota court the instant case seems in accord with all the cases.

WORDS AND PHRASES—WHAT IS "FOOD"?—An information was preferred against defendant under the Food Hoarding Order, for hoarding tea. The Order defined "food" as including "every article which is used for food by man, or which ordinarily enters into the composition or preparation of human food." *Held*, tea is not food, and the information will not lie. *Hinde* v. *Allmond* (1918), 87 L. J. K. B. 893.

The court was of opinion in the principal case that the Order was aimed at those articles which are taken into the system as nourishment, and the purpose controls the meaning to be attached to the words used. A similar case was *Merle* v. *Beifeld*, 194 Ill. App. 364, where the court held that milk was a food or a drink depending on whether it was served as part of a meal with eatables or was served alone, this distinction being deemed necessary to carry out the presumed purpose of a contract for commissions on sales of drinks. See also *Leavett* v. *Clark* (1915), 3 K. B. 9, which held that an information for stealing winkles would lie under a section of the Larceny Act referring solely to fish, because it had been held for thirty years, following *Caygill* v. *Thwaite*, 49 J. P. 614, that a crayfish was a fish, and the court could not distinguish between a crayfish and a winkle in respect to its "fish-